

**BEFORE THE
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Joint Application of American Transmission Company LLC, ITC Midwest LLC, and Dairyland Power Cooperative, for Authority to Construct and Operate a New 345 kV Transmission Line from the Existing Hickory Creek Substation in Dubuque County, Iowa, to the Existing Cardinal Substation in Dane County, Wisconsin, to be Known as the Cardinal-Hickory Creek Project

Docket No. 5-CE-146

**Intervenor Klopp's Motion Objecting to
ATC and ITC Midwest Request to
Reopen Docket No. 05-CE-146**

Applicants American Transmission Company LLC (“ATC”) and ITC Midwest LLC (“ITC-M”), filed a *Request to Reopen Docket No. 05-CE-146*¹ (“*Request*”) on June 28, 2021². ATC and ITC request that “the Public Service Commission of Wisconsin (“Commission”) act on its own motion to rescind the Final Decision granting the Certificate of Public Convenience and Necessity (“CPCN”) issued for the Cardinal-Hickory Creek 345-kilovolt Transmission Line Project (“Project”) and reopen the above-captioned docket to consider next steps”. Given the timing of this request and the fact that the Final Decision for the Cardinal-Hickory Creek project (“CHC” or “the project”) is currently under judicial review, Ms. Klopp objects to the reopening of the docket.

BACKGROUND

The Commission issued a Final Decision on the project on September 26, 2019. Under Wis. Stat. § 227.52 and Wis. Stat. § 227.53, the project entered into both the Wisconsin Circuit

¹ PSC REF# 414396

² Dairyland Power Cooperative also submitted a correspondence supporting the ATC and ITC *Request*, PSC REF#414398

Court system and the Federal Court System for judicial review. “Administrative decisions which adversely affect the substantial interests of any person, ... are subject to review”.³ On the basis of their knowledge, appeal arguments by both the Applicants and the PSCW staunchly denied the possibility of bias by Commissioner Huebsch.⁴ As scheduled discovery and depositions for the Dane County Circuit Court review of the PSCW’s Final Decision became imminent, ATC and ITC-M, have reversed their position on questions regarding Commissioner Huebsch’s ex-parte communications and have requested that the PSCW rescind its Final Decision on this basis and reopen docket 5-CE-146, in order “to consider next steps”.

ARGUMENT

The ATC and ITC *Request* asks that the PSCW “act on its own motion” in the matter of reopening the docket to rescind the CPCN for the project. According to Wis. Stat. § 227.49 (1), the deadline for such action has passed.⁵ In making the request to the Commission, it is ATC and ITC-M that are requesting the reopening. The limits for such a reopening require filing within 20 days after service of the final order⁶, with a decision by the Commission on the request within 30 days.⁷

Given that ATC and ITC-M have made this request as new evidence is pending in the Circuit Court appeal of the CHC Decision and have been joined by the PSCW in requesting a Limited Stay of all deadlines in that Court proceeding (most imminently, those deadlines for discovery and depositions), it would be questionable for the PSCW to support a claim that the Commission decided to reopen Docket No. 5-CE-146 on its own volition under Wis. Stat. §

³ Wis. Stat. § 227.52

⁴ Dane County et al v. Public Service Commission of Wisconsin; Case No. 19-CV-3418: “The Allegations Against Commissioner Huebsch Are Meritless.” PUBLIC SERVICE COMMISSION OF WISCONSIN’S RESPONSE BRIEF IN SUPPORT OF ITS FINAL DECISION at 66; “The charges they have levied against Commissioner Huebsch are nothing more than unsupported, conclusory allegations and lack any indicia of credibility.” RESPONSE BRIEF OF INTERVENOR-RESPONDENTS AMERICAN TRANSMISSION COMPANY LLC, DAIRYLAND POWER COOPERATIVE, AND ITC MIDWEST LLC IN OPPOSITION TO MOTION TO ACCEPT NON- RECORD EVIDENCE at 6-7

⁵ Wis. Stat. § 227.49 (1): “An agency may order a rehearing on its own motion within 20 days after service of a final order.”

⁶ Wis. Stat. § 227.49 (1): “Any person aggrieved by a final order may, within 20 days after service of the order, file a written petition for rehearing which shall specify in detail the grounds for the relief sought and supporting authorities.”

⁷ PSC 2.28: Reopening. If the commission does not decide a request made under s. 196.39, Stats., within 30 days after the filing of the request, the request shall be deemed denied.

196.39 (1).⁸ The ATC and ITC *Request* attempts to commingle the requirements of Wis. Stat. § 196.39 (1) and the language in Wis. Stat. § 227.49 (1), acting “on its own motion”. Ms. Klopp contends that a careful reading of the statutes will show that these are two separate references.⁹

In ATC and ITC-M’s *Request*, three statements demonstrate the need to proceed, deliberately and slowly with factually supported reasoning and intent:

- Regarding the Communications between Commissioner Huebsch and others,¹⁰ ATC and ITC-M state “We have no information that these *Signal* communications were related to the Project or the CPCN docket.”;
- ATC and ITC-M’s *Request* to “reopen the above-captioned docket *to consider next steps*” (emphasis added), and;
- ATC and ITC-M contend that the project is still needed and assert other claims that are under consideration in the Circuit Court appeal.¹¹

What these inconsistencies reveal is, that:

- It is not in the Public Interest to abandon the Circuit Court appeal of the CHC Decision, because it is unknown whether ATC and ITC-M examples of *Signal* communications are germane to the appeal or the request to reopen the docket.
- Petitioners possess no idea or guarantee of what type of PSC process would follow rescinding the PSC CHC order.
- ATC and ITC-M are not addressing the legalities or remedy but simply pursuing a transmission line under new, undefined terms in the reopened docket.

⁸ Wis. Stat. § 196.39 (1): “The commission at any time, upon notice to the public utility and after opportunity to be heard, may rescind, alter or amend any order fixing rates, tolls, charges or schedules, or any other order made by the commission, and may reopen any case following the issuance of an order in the case, for any reason.”

⁹ The Wis. Stat. § 227.49 (1) language: “An agency may order a rehearing on its own motion within 20 days after service of a final order.” is in reference to approving a rehearing of a contested case and Wis. Stat. § 196.39 (1) refers to general authority retained by the Commission in relation to orders that the Commission issues.

¹⁰ “Commissioner Michael Huebsch engaged in regular communications with an ATC employee, a former independent contractor for ITC, and other individuals over several years and while the CPCN application was pending.”

¹¹ “While we are disappointed by these recent developments, they have no bearing on the state’s need for the Project, which is vital to ensuring a cleaner, more reliable, and more affordable energy future for Wisconsin. The Project will reduce energy costs, improve transmission reliability, support the interconnection of nearly 10 gigawatts of renewable generation within the region, and reduce regional greenhouse gas emissions. From this perspective, the Project is critical to advancing the state’s goal of ensuring that all electricity consumed within Wisconsin is 100 percent carbon-free by 2050”

These uncertainties, that lie at the heart of what ATC and ITC-M are requesting, potentially undermine the current process of Judicial Review. Ms. Klopp believes that any action by the Commission that would derail the statutory right to the judicial review process would infringe upon the rights of the Petitioners and Intervenor-Petitioners in the appeal proceeding.

CONCLUSION

Ms. Klopp respectfully requests that the Commission deny the ATC and ITC-M *Request to Reopen Docket No. 05-CE-146*, in the interest of the due process rights, established for parties to an Administrative proceeding in Wis. Stat. § 227.52.

Dated this 29th day of June, 2021.

/S/ Chris Klopp

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